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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.M., a Person Coming Under  
the Juvenile Court Law.

B294421  
(Los Angeles County  
Super. Ct. No. 18CCJP06496)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Michael E. Whitaker, Judge. Reversed and remanded with directions.

Linda Rehm, under appointment by the Court of Appeal, for  
Defendant and Appellant M.M.

Patricia G. Bell, under appointment by the Court of Appeal, for  
Minor J.M.

No appearance for Plaintiff and Respondent.

In October 2018, the Los Angeles County Department of Children and Family Services (Department) filed a petition under Welfare and Institutions Code section 300, subdivision (b)(1),<sup>1</sup> seeking jurisdiction over J.M. (born June 2012). The petition was based on conduct by Father and did not name Mother. The juvenile court sustained the allegations as to Father and ordered J.M. placed with Mother. The Department, Mother, and counsel for J.M. asked the court to terminate jurisdiction and grant Mother full custody. The court declined to terminate jurisdiction, and Mother and J.M. now appeal.<sup>2</sup> We reverse.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Mother and Father were separated and awarded joint legal and physical custody of J.M. in January 2016. Mother is married to Tyler P. (Stepfather), and Father's girlfriend is named Amber.

### *Prior Department Involvement*

In February 2016, a confidential report was made to the Department, stating that Father was driving under the influence of alcohol when he brought J.M. from Mother's house to his own house and that Father was intoxicated while caring for J.M. The caller reported that Mother was trying to obtain full custody of J.M., but the family

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<sup>1</sup> Unspecified statutory references will be to the Welfare and Institutions Code.

<sup>2</sup> The Department submitted a letter stating that it is not the proper respondent in the appeal and will not take a position regarding Mother's and J.M.'s contentions.

court would not change the custody arrangement. Father denied alcohol abuse. The Department concluded J.M. was not in immediate danger of serious harm.

### *October 2018 Detention Report*

On September 2, 2018, Father was driving under the influence of alcohol with J.M. and Amber's son, Wolf, in the car. Father fell asleep and crashed the car into a tree. Father was arrested for felony driving under the influence, and the children were taken to the hospital.

The police report stated that Father claimed he had had only one shot of vodka before driving and that he insisted the crash was caused by another car cutting him off. Father was almost unable to stand, and he smelled of alcohol and had bloodshot eyes and slurred speech. Father was unable to attempt field sobriety tests because he was unable to maintain his balance.

Witnesses to the accident stated that there was no other car involved and that Father was asleep at a stop light. The witnesses also reported that there was an empty bottle of vodka in the car. Father was staggering and noticeably drunk.

The Department caseworker visited Mother's home and found it to be clean and appropriate. The caseworker interviewed J.M., who told her that after Father picked him up, Father bought a bottle of clear liquid at Vons and then went to pick up Wolf. J.M. said the liquid smelled like alcohol and that Father kept drinking it in the car. J.M. said Father crashed the car because he was sleeping. He and Wolf were taken to the hospital, and Stepfather came and picked them up.

J.M. told the caseworker he has two dads, but he prefers Stepfather because Father “doesn’t keep his promises.” J.M. said that Stepfather “is the good dad because he is nice,” while Father “doesn’t love me.” J.M. was “extremely distraught” about the car accident and continually stated that Father did not love him.

Mother told the caseworker she was out of town when Amber called and told her about the accident, so Stepfather went to the hospital to get J.M.

Father told the caseworker he believed “over the counter energy pills” he had taken caused the accident. Father did not believe alcohol contributed to the accident because “he had ‘only three shots of cocktail in a flask.’” Father was enrolled in an outpatient program to treat his alcohol consumption.

J.M.’s first grade teacher told the caseworker that J.M. frequently told her Father was mean to him and did not love him. J.M. would cry on Fridays because he did not want to go to Father’s home. Instead, he wanted to stay with Mother and Stepfather. He repeatedly told his teacher Father was not trustworthy.

In a Last Minute Information for the Court, the Department recommended that the court terminate jurisdiction and grant Mother legal and physical custody.

#### *December 5, 2018 Jurisdiction/Disposition Hearing*

Mother testified at the hearing that she and Father separated in the summer of 2014. In January 2016, Father’s roommate called Mother to say that Father was highly intoxicated and J.M. was

traumatized and crying. Mother contacted the Department about the incident, but she was “very disappointed” when the caseworker concluded that J.M. was not at risk.

Mother then went to family court to try to have the custody arrangement altered, but the family court denied the request on April 1, 2016. The family court instead ordered Father to undergo counseling and attend A.A., ruling that Mother and Father could “work out the parenting details.” The custody order remained at 50/50.

Mother therefore tried to work with Father for J.M.’s well-being, but Father did not cooperate, and the situation worsened over the year. Mother tried numerous times to ask Father what was happening and to encourage him to get help because “he looked like he was a drug addict,” but Father “just denied everything.” There were no further family court proceedings until September 2018.

A few days after the September 2018 car accident, Mother filed an ex parte request in the family court.

Counsel for Mother, J.M., and the Department asked the court to close the matter with an order giving Mother sole custody, on the grounds that Mother was non-offending and had done everything possible to protect J.M.

The court sustained the allegations of the petition as to Father and declared J.M. a dependent of the court under section 300, subdivision (b). The court denied the request to terminate jurisdiction on the ground that Mother did not try to change the family court order between April 2016 and September 2018 and therefore did not do enough to protect J.M. The court ordered J.M. placed with Mother,

ordered Father into a drug and alcohol program, and ordered Mother to participate in Al-Anon or an equivalent program. The court ordered monitored visits for Father if the criminal protective order was modified. The court ordered the parties to return for a June 26, 2019 section 364 hearing. Mother and J.M. timely appealed.

## DISCUSSION

Mother and J.M. contend the juvenile court abused its discretion in denying their requests to terminate jurisdiction. We agree.

“At the jurisdiction stage of a dependency proceeding, the court determines whether the child is a person described by section 300. [Citations.] If the juvenile court finds a basis to assume jurisdiction, the court is then required to hear evidence on the question of the proper disposition for the child. [Citations.]” (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 205 (*Destiny D.*))

Section 362 applies where, as here, “a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300, and the court orders that a parent or guardian shall retain custody of the child.” (§ 362, subd. (c).) Under this section, “the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court.” (*Id.*, subd. (a).) “Notwithstanding the expansive language in these grants of judicial authority, the statutes and case law mandate the juvenile court may impose only those limits on parental rights that are necessary to protect the child.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.)

““The juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.” [Citation.]’ [Citation.]” (*In re Daniel B.* (2014) 231 Cal.App.4th 663, 673.) The juvenile court’s factual findings are reviewed for substantial evidence. (*In re Israel T.* (2018) 30 Cal.App.5th 47, 51.) ““Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]” [Citation.]’ [Citation.]” (*In re M.M.* (2015) 240 Cal.App.4th 703, 719–720.)

The juvenile court found that Mother failed to protect J.M. because she did not return to family court to try to have the custody arrangement changed between April 2016 and the accident in September 2018. We disagree that this constitutes evidence that Mother failed to protect J.M.

Mother called the Department and went to family court to try to change the custody arrangement after the January 2016 incident. She then followed the order of the family court, which not only denied her request to change the custody arrangement but directed her to continue to work with Father on parenting J.M. Mother complied with the family court order. There was no evidence of any further incidents between that time and September 2018 that would have supported a request for the family court to reconsider its decision if she had made such a request.

There is no evidence in the record to support a finding that Mother failed to protect J.M. The juvenile court thus abused its discretion in denying the requests to terminate jurisdiction. (Compare

*Destiny D., supra*, 15 Cal.App.5th at pp. 201, 213 [affirming juvenile court order terminating jurisdiction where mother obtained a restraining order and temporary child custody and visitation orders after “a long history” of domestic violence during 18-year relationship with father].)

### **DISPOSITION**

The order denying Mother’s and J.M.’s requests to terminate jurisdiction is reversed and the matter remanded for the court to terminate jurisdiction with a juvenile custody order granting Mother sole custody.

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WILLHITE, J.

We concur:

MANELLA, P. J.

CURREY, J.